

## LEGISLATIVE, DOCTRINAL AND PRACTICAL CHALLENGES REGARDING THE EXAMINATION OF THE BODY AT THE SCENE IN THE REPUBLIC OF MOLDOVA

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**Abstract:** *This study addresses the legislative and practical challenges related to the on-site examination of cadavers under the legislation of the Republic of Moldova. It focuses on both criminalistic and procedural aspects, identifying deficiencies in the practice of investigative bodies and offering concrete recommendations to enhance the effectiveness of this procedural action. Additionally, it suggests legislative amendments to eliminate ambiguities and strengthen the normative framework. The article examines, from a tactical and procedural criminalistics perspective, the process of cadaver examination, emphasizing the need for interdisciplinary approaches to ensure a comprehensive investigation at the discovery site. Drawing on judicial practices, it highlights legislative gaps, contradictions, and tactical errors that may negatively impact the conduct of such investigations. Furthermore, it includes observations on the extra-procedural transportation of the cadaver from the discovery site to forensic institutions, a topic deemed insufficiently regulated. The author underscores the importance of cadaver examination in the broader context of criminal investigations, noting that this process should not be confined to on-site inspections but should extend to other procedural stages. Accordingly, additional regulations are proposed to prevent subjective interpretations and support the work of investigative bodies. The study also provides tactical and methodological recommendations aimed at optimizing the investigative process as a whole.*

**Key-words:** *cadaver examination, procedural criminal law, criminalistics, investigative tactics, investigation efficiency, investigative bodies.*

### Introduction

The discovery of a deceased person in judicial proceedings represents an incident. The body may be found either at the place where the death occurred or where it was moved. In the first situation, the scene of the incident and the place where the body was found coincide and are examined as part of the on-site investigation.

On-site investigation is one of the most important and frequent activities during which the criminal investigation officer directly perceives various objects relevant to the case.

For the successful investigation of the offense, on-site investigation is the most critical action, as it constitutes a reliable source for obtaining evidence. The effectiveness of the

criminal investigation directly depends on the results of this activity. The prompt, objective, thorough, and skilled execution of an on-site investigation is key to solving an offense.

Not in vain, on-site investigation is symbolically referred to as the "key to solving the problem with multiple unknowns" (*Yuri Belozarov, Vladimir Ryabokon, 1990*).

The examination of the body during the on-site investigation, both from a tactical-criminalistic and procedural perspective, is extensively addressed in the international specialized literature. Domestic literature contains segmented studies that explore the subject through the lens of forensic medicine (*Baciu Gheorghe, 2008*), criminalistics (*Osoianu Tudor, 2020*), and criminal procedural law. However, in the national bibliographic domain, there is no work representing a blend of knowledge encompassing the aforementioned fields, specifically addressing the examination of the body at the scene.

Despite this, there are disagreements in the specialized literature regarding the contribution of body examination to establishing the offense and identifying the perpetrator. In this regard, authors William Aguilar-Navarro and Carmen Cerda-Aguilar note that "the external examination of the body represents a decisive means in solving various issues and questions related to a specific individual. Its purpose is not only to establish a diagnosis but also to provide information about the committed act, the existence of pathologies, or diseases that have a vital impact on the investigation of the offense" (*William Aguilar-Navarro, Carmen Cerda-Aguilar, 2022*).

Author V. Tomilin observes that "the examination of the body at the scene is not an end in itself but a set of actions aimed at solving the questions posed by the criminal investigation officer" (*Vitaly Tomilin, 2001*). Therefore, the description of the body in the on-site investigation report should not be schematic, referring only to general cadaveric phenomena, but should reflect data necessary to answer questions related to the time of death, the mechanism of inflicting bodily injuries, violent or non-violent death, and, additionally, for each case, describe the specific features of a certain pathology.

Vieru-Socaciu Radu mentions that "in cases of homicide, the forensic doctor is tasked with providing the judiciary with objective evidence and the conditions under which the offense was committed. The specific way in which the forensic doctor assists in solving a homicide involves conducting a forensic autopsy of the body, going through all the stages required in such cases, namely the on-site examination, forensic autopsy of the body, examination of physical evidence, and examination of the aggressor or suspected aggressor" (*Radu Vieru-Socaciu, 2002*).

"The main activity of the forensic doctor consists of the examination of the victim during the on-site investigation and later during the forensic autopsy" (*Radu Vieru-Socaciu, 2002*).

According to Popov V., "the examination of the body at the scene involves urgent investigative actions aimed at studying the on-site situation, detecting, recording, and collecting various traces and other material evidence to clarify the nature of the event" (*Valentin Popov, 2001*). Delays in conducting the on-site investigation can lead to changes in the scene and the loss of traces.

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"Based on the data discovered during the on-site examination of the body, the forensic doctor (or physician) can only propose typical hypotheses" (*Osoianu Tudor, 2020*) which, although important, have a limited operational impact on the investigation process.

Ultimately, objective, complete, and substantiated conclusions regarding the issues arising during the examination of the body can only be formulated after a thorough examination of the body during the autopsy. In this regard, the criminal investigation body is not entitled to demand from the forensic doctor (or physician) participating in the body examination as a specialist conclusions based solely on the on-site examination of the body.

Body examination can be carried out in cases involving homicides, traffic accidents, fires, etc. In such situations, the human body is the primary object within the crime scene and must be examined with utmost thoroughness.

Body examination is largely associated with on-site investigation but should not be forgotten that this activity can also be carried out during other criminal investigative actions, such as searches, collection of objects or documents, and, in our opinion, during on-site verification of statements. Regarding the examination of the body during on-site verification of statements, while the criminal procedural law stipulates, "If objects and documents that may serve as evidence in the criminal case are discovered during the on-site verification of statements, they are collected, and this is recorded in the report," we believe that the criminal investigation body must (is obliged to) examine them before collecting them.

In the same context, it should be noted that body examination can also constitute an independent criminal investigative action. Such a situation arises when the complete and objective examination of the human body at the discovery site could not be achieved or was performed inadequately, with the body being sent to the forensic examination institution, and before the forensic autopsy is conducted, to discover new circumstances that might impact the expertise (e.g., in formulating questions), a human body examination is carried out. In this context, the criminal procedural law is imperfect, as it does not regulate body examination outside the on-site investigation. For these reasons, we propose that the examination be regulated as an independent procedural action.

The examination of the human body at the place of its discovery or location is a complex criminal investigative action stipulated by criminal procedural law to be conducted by the criminal investigation body with the participation of a forensic doctor, or, in their absence, with the participation of another physician. If necessary, other specialists may also be involved in the body examination (*Criminal Procedure Code of the Republic of Moldova, 2013*).

In the same context, it should be mentioned that the complexity of performing this action lies in the necessity of interweaving various sciences (criminal procedural law, medicine, criminalistics), which, in essence, must form a cohesive whole at the time of the human body examination.

**CONTENT.** Next, we do not aim to study the rules and stages governing the process of examining the cadaver. There is sufficient research dedicated to this subject, based on which an algorithm for examining the human cadaver can be developed. Thus, we consider it timely and relevant to highlight legislative collisions and gaps, as well as tactical and

procedural errors, which determine and perpetuate the existence of flawed practices concerning the examination of the cadaver.

### **Legislative collisions and gaps**

Analyzing the national procedural-criminal legislation reveals a precarious situation concerning the examination of cadavers at the scene. Notably, Article 118 paragraph (1) of the Criminal Procedure Code (hereinafter CPP) uses the term "human or animal cadavers," while Article 120 CPP refers only to the term "cadaver" without specifying whether it pertains to humans or animals.

The same observation applies to the legislation of neighboring countries:

*"Exhumation may be ordered by the prosecutor or the court to determine the type and cause of death, identify the cadaver, or establish any elements necessary for resolving the case"* (Romanian Criminal Procedure Code, 2010).

*"The examination of a cadaver by the investigating officer or prosecutor is conducted with the mandatory participation of a forensic expert or a doctor if the timely involvement of a forensic expert is not feasible"* (Ukrainian Criminal Procedure Code, 2012).

According to the Romanian explanatory dictionary, the term "cadaver" refers to *"the body of a dead human or animal; carcass, remains"*.

This creates a situation where, based on the general wording of Article 120 CPP, it becomes unclear what type of cadaver is being examined, thereby complicating the formation of the operative investigation team with the necessary specialists (forensic doctor, another doctor, or veterinarian). The lack of clarity in Article 120 CPP concerning the type of cadaver is significant because it affects which specialist the investigating authority must invite to the scene.

For instance, when examining a human cadaver, the investigating authority will involve a forensic doctor, while for an animal cadaver, a veterinarian will act as a specialist. The situation becomes even more complex when the investigating authority requires other specialists (e.g., in ecological crimes involving deceased insects, fish, etc.). In such cases, the cadaver belongs to the fauna and is neither human nor strictly animal.

This necessitates legislative intervention to amend and supplement Articles 118 paragraph (1) and 120 CPP to regulate all types of cadavers, including human, animal, insect, and other living beings. Alternatively, Article 6 CPP could be amended to include a definition of "cadaver," covering all these categories.

Considering the views of specialized authors regarding the purpose of on-site investigations (*Antoniu Gheorghe, Volonciu Nicolae, Zaharia Nicolae, 2013*), in correlation with Article 118 paragraph (1) CPP, we observe that the purpose of the evidence-gathering process is limited to "(...) discovering and collecting traces (...)" although other paragraphs (3)-(5) and (7) of Article 118 CPP identify an additional purpose – *investigating/examining objects and documents* – the current wording restricts the investigating officer's actions to discovering and collecting evidence. In this regard, considering Article 118 paragraph (1) of the Criminal Procedure Code (hereinafter CPP), regarding the purpose of on-site investigation, it is noted that the actions of the representative of the criminal investigation body conducting the on-site investigation must be limited only to the discovery and collection

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of crime traces. In other words, during the preparation phase of the on-site investigation, before reaching the site, it is not necessary to involve other specialists (forensic doctor, IT specialist, biologist, etc.) in the operational investigation group, since the objects and documents, as well as the corpses found on-site, will not be examined but merely discovered and collected. This fact contradicts the provisions of Article 118 paragraphs (4), (5), and (7), and Article 120 of the CPP of the Republic of Moldova. For these reasons, it is necessary to amend and supplement the procedural criminal norms, particularly Article 118 paragraph (1) of the CPP, to include the investigation and examination of objects and documents as a purpose of the on-site investigation.

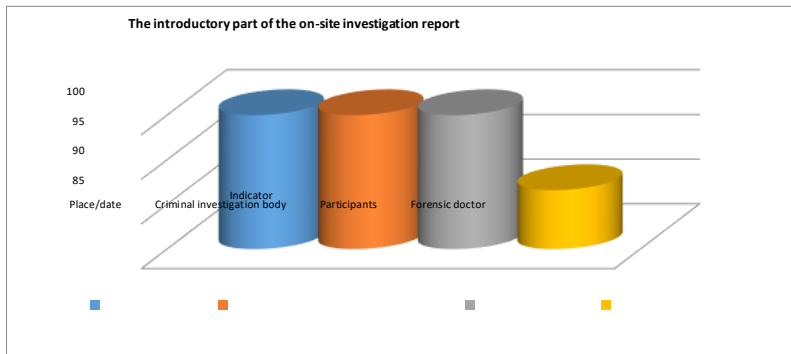
Moreover, the indicated procedural norm refers only to objects and documents, without mentioning corpses, liquid, and gaseous substances, etc. Therefore, the phrase "objects and documents" should be replaced with "objects, documents, corpses, as well as liquid, solid, and gaseous substances." In this sense, the procedural criminal norm will clarify several procedural and tactical criminal issues.

The need to examine discovered objects, documents, liquid, solid, and gaseous substances is imperative, representing the essence of the on-site investigation. Omitting this action will result in the inability to establish the individual characteristics specific to each object or trace, "the signs characterizing the individuals involved in committing the crime, such as their number, approximate age, physical features, presence of certain skills, capacities, various psychological deviations, etc., circumstances characterizing the objective aspect of the crime, time, manner, the perpetrator's actions, consequences of the crime, the causal link between the act and consequences, discovery of events characterizing the motive and purpose of the crime, discovery of circumstances contributing to the commission of the crime" (*Dolea Igor, 2020*). Consequently, the on-site investigation report will not be drafted objectively and comprehensively, leading to the neglect and violation of the active role of the criminal investigation body and the principle of officiality of the criminal process, as well as the guarantees (*Ostavciuc Dinu, 2022*) provided by Article 2 of the ECHR.

**Tactical-procedural errors.** To identify tactical-procedural errors, the examination of human cadavers was analyzed from both tactical and procedural perspectives, based on over 60 on-site investigation reports prepared by the criminal investigation authorities from various administrative-territorial zones of the Republic of Moldova over the past three years (see Diagram No. 1).

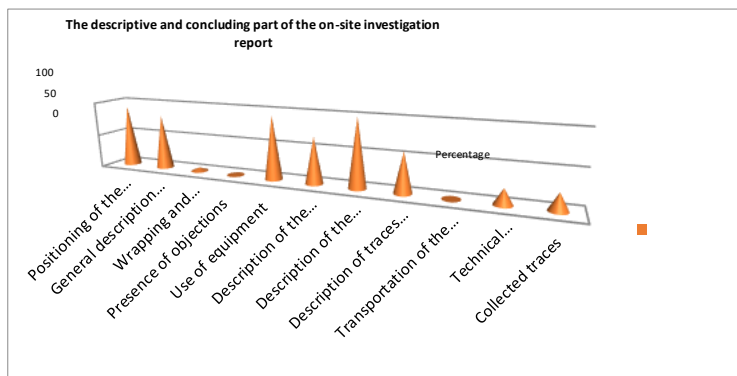
In this regard, it is noted that the introductory section of the on-site investigation report is subject to the fewest criticisms. Practically all the reports included the following details: The location and date of the criminal investigation action; The position, name, and surname of the person drafting the report; The name, surname, and role of the persons who participated in conducting the criminal investigation action, and, where necessary, their addresses, objections, and explanations; The date and time of the commencement and conclusion of the criminal investigation action, etc. (*Criminal Procedure Code of the Republic of Moldova, 2013*).

**Diagram No. 1**



An opposite situation is observed in the recording of information in the descriptive and final parts of the on-site investigation report. The procedural and criminalistic requirements that should govern the detailed description of the observed facts, as well as the measures taken during the criminal procedural activity, the mentions regarding the taking of photographs, video recordings, audio recordings, or the creation of molds and trace patterns, the use of technical means and the results obtained, as well as the mention that, before using the technical means, the participants in the criminal procedural activity were informed about this, are often neglected by representatives of the criminal investigation body (see Diagram No. 2).

**Diagram No. 2** (*The described indicators – Positioning of the corpse, General description of the corpse; Wrapping and sealing of the corpse; Use of equipment; Presence of objections; Description of the circumstances; Description of the clothing; Description of traces on the corpse; Transportation of the corpse; Technical documentation; Collected traces*)



In addition to the presence of these deficiencies, we also identify tactical-procedural errors, which essentially demonstrate that the professionalism of some criminal investigation officers needs improvement.

Thus, in the descriptive and final parts of the on-site investigation report, the following errors are observed:

**Mentioning the identity of the cadaver.** In the case of examining a cadaver at the place of discovery or location, three scenarios may arise:

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- A cadaver or parts of a cadaver with an unknown identity, without any documents to aid in identifying the person;
- A cadaver or parts of a cadaver with an unknown identity, accompanied by documents that could assist in identifying the person;
- A cadaver with a known identity.

We believe that regardless of the scenarios outlined above, the investigative body is not entitled to make subjective evaluations or draw conclusions. Its sole obligation is to completely and objectively describe the circumstances found at the scene in their original state. In this regard, the investigating officer is not authorized to mention the identity of the cadaver in the procedural action report, even if there are participants who are aware of the cadaver's identity. The actions of the investigating officer must be limited to the application of the rules of forensic identification, with the determination of the cadaver's identity to be carried out through other evidentiary procedures (e.g., statements, identification presentations, forensic examinations).

***Conducting other procedural actions as an integral part of the scene investigation in cases of cadaver examination.*** It is pertinent to mention that doctrinal opinions can sometimes negatively influence practitioners' judgments and, consequently, the work of the investigative body. For example, the inclusion of the offense's narrative, victim statements, or witness statements in the scene investigation report has been debated. We disagree with this position, as such aspects should be included in other procedural documents, not in the scene investigation report. This report should only record objections raised by participants in the action. Otherwise, hearings and other procedural actions could influence the objectivity of the investigation.

Revisiting the issue of including witness or victim statements in the scene investigation report, it is worth noting that some authors (*Didac Veaceslav, 2007*) do not consider this practice to be an error and even provide a model of a scene investigation report that incorporates witness statements.

***Inclusion in the on-site investigation report of the necessity to order forensic medical examinations of corpses and human body parts to establish:***

- The cause, estimated time, and circumstances of death;
- The age of the injuries;
- The mechanisms of injury and their causal relationship with the death;
- The degree of bodily harm.

Including in the on-site investigation report the necessity to order forensic examinations or medical findings is considered a procedural mistake. The investigative officer should refrain from making such determinations regarding future actions to be undertaken. This approach is inadmissible from a criminalistics perspective as it disrupts the planning process of the criminal investigation, which represents "a complex process of analyzing the activities to be carried out and their logical sequence, constituting a guide that ensures perspective and efficiency in the investigation" (*Osoianu Tudor, 2020*).

"Planned conduct of criminal investigations also constitutes an important premise for increasing decisiveness against criminal actions".

**Packaging and sealing of the human cadaver.** None of the reports we reviewed contain mentions regarding the packaging and sealing of the cadaver. In our view, a human cadaver discovered at the crime scene represents, broadly speaking, a trace of the crime. Therefore, the general rules for discovering, examining, recording, and collecting traces must also be applied to the cadaver. In this context, the procedural report of the action should include information regarding the means and method of packaging and sealing.

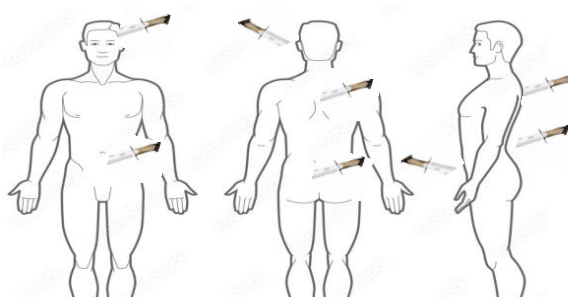
**Removal of objects from the cadaver.** The issue of researching the subject of object removal from the cadaver is addressed solely from the perspective of forensic medicine. In this regard, the national author Baciu Gh. states: "First, only objects that could have caused bodily injuries (a firearm, an axe or hammer, a chain around the neck, etc.) are examined and described. These objects and tools will be examined to determine whether they could have caused injuries similar to those found on the cadaver. Some objects may even be inside the deceased's body (a knife in the channel of a stab wound, a gag in the oral cavity, etc.). Removing such objects from the victim's body at the crime scene is strictly prohibited. Chains around the neck of a hanged individual should also not be removed" (Baciu Gheorghe, 2012). A similar approach is also observed in the research of foreign authors.

"(...), objects embedded in the cadaver (e.g., a gag in the mouth, a knife in a wound) shall only be removed during the examination at the morgue" (Vladislav Viter, 2016). "Certain objects may be located in the body of the cadaver. Their removal is unacceptable. Furthermore, the position of such instruments must be secured during the transport of the cadaver to the morgue" (Natalia Kachina, 2013). "It is prohibited to remove objects embedded in the cadaver or located in its natural orifices. These objects must be left in their discovered state, ensuring safety during transportation, for instance, by securing them with adhesive tape" (Evgeny Bartenev, 2014).

Despite the consensus among forensic medicine specialists regarding this practice, no sources or arguments explicitly explain why objects embedded in the cadaver or present in its natural orifices must remain in place. To clarify such situations, consultations were held with local forensic specialists, whose argument was: "No object is removed from the cadaver because the forensic pathologist must directly perceive all circumstances that may influence the expert's examination process and conclusions."

This argument is plausible; however, challenges arise when multiple objects are embedded in the cadaver, protruding from various areas (e.g., back, abdomen, chest, lower limbs – see Figure 1), and it becomes impossible to transport the cadaver without altering the characteristics of the injuries or the positioning of the embedded objects.

**Figure No. 1**





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Regarding the issue raised, we consider that the investigative body may extract objects embedded in or present within the corpse to examine and document them in the report of the criminal procedure action. This conclusion is based on the general rules of the tactics for conducting on-site investigations (*Odagiu Iurie, 2013*) and the provisions of Articles 118 (1), (3), (4), 120, and 260 (2), points 5-6, and (3) of the Code of Criminal Procedure (CPP). The procedural criminal legislation stipulates that objects discovered during on-site investigations must be examined at the location where the action is performed, and the results of the examination must be recorded in the report of the respective action. If the examination of objects and documents requires more time or in other specific cases, the person conducting the investigation may seize them for further examination at the premises of the investigative body.

Furthermore, it should be noted that when extracting objects from the corpse, they must not be altered (e.g., they must not be shaken, washed, etc.). The objects should only be examined to describe their general and individual characteristics, subsequently forming the subject of a comprehensive forensic examination that will include both the corpse and the extracted object. Additionally, objects extracted from the corpse should be examined on-site to detect, examine, document, and collect other traces (e.g., fingerprints on the knife handle).

We recommend that when objects are extracted from the corpse, measures should be taken to preserve the integrity of the wound (e.g., by covering the wound to prevent contamination of the bodily injury).

***Who examines the body first?*** "The examination of the body must be carried out directly at the location where it was discovered, as otherwise, the connection between the elements of the crime scene – specifically the circumstances surrounding the discovery of the body, its position, and other identifying features – would be disrupted" (*Wilhelm J. G, 1946*).

In cases involving pieces of evidence, in addition to the forensic examination, the medical examiner will determine the correlation between the distinctive features of the evidence and the injuries observed during the examination of the victim (*Radu Vieru-Socaciu, 2002*).

Regarding this subject, it should be noted that if no medical assistance is required at the preparation stage for conducting the on-site investigation, the process will begin with the involvement of the forensic officer (documenting circumstances, objects bearing traces, the position of the body, etc.), followed by the involvement of the medical examiner or another doctor (determining the actual death of the individual, assessing the time elapsed since death, etc.). In our opinion, there cannot be a universal algorithm for involving specialists in the

advisory activities provided to the investigative authority during the examination of the body. Each case is unique in its way. Consequently, the investigative officer will proceed based on the case's circumstances, the specifics of the traces present, and other relevant factors.

A particularly significant issue is *the transportation of the body from the site of discovery to the judicial expertise institution*. Although this activity is extra-procedural, proper transportation of the body affects the preservation of traces, existing injuries, and other factors that can influence the investigation of the case. Based on the analysis conducted, we can conclude that in 100% of cases, the discovered bodies should have remained at the scene or should not have been accepted by the forensic institution due to questions about:

- Who exactly is responsible for transporting the body from the discovery site to the forensic expertise institution?
- What means of transport will be used to carry the body?
- From a procedural standpoint, how is the body handed over for transport, and what procedural document is prepared?
- Who is responsible for ensuring the integrity of the body during its receipt, handover, and transportation?
- Who will receive the body at the forensic institution, and based on what documents?
- Is it necessary for the forensic institution to inform the investigative authority about the receipt of the body and confirm its integrity upon arrival?
- And other procedural and tactical aspects.

Clarification of these questions will be addressed in a separate scientific study dedicated to the transportation of the body to the forensic institution: tactical and procedural criminal issues. This topic is sensitive and warrants a distinct approach.

### **Conclusions**

The examination of the human body at the place where it was discovered or where it is located represents a complex procedural and forensic tactical action that requires the involvement of various sciences, which, in essence, must form a cohesive whole.

The examination of the cadaver is possible not only as part of the crime scene investigation but also during other procedural actions, including as an independent procedural action. In this sense, to avoid ambiguous interpretations, it is necessary to amend and supplement procedural criminal legislation to regulate examination as a separate procedural action. We propose amending and supplementing Article 118 paragraph (1) and Article 120 of the Code of Criminal Procedure (CPP) to regulate all types of cadavers, including human, animal, insect, and other species. On the other hand, legislative intervention could amend and supplement Article 6 of the CPP to define the term "cadaver," which would encompass the indicated types.

At the same time, we propose amending and supplementing Article 118 paragraph (1) CPP to include the investigation and examination of objects and documents as objectives of the crime scene investigation.

Legislative intervention is necessary to replace the text "objects and documents" in Article 118 CPP with "objects, documents, cadavers, as well as liquid, solid, and gaseous

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substances." In this sense, the criminal procedural rule will clarify several procedural and forensic tactical issues.

We make the following recommendations for the prosecutorial body:

- Not to request forensic examiners for substantiated conclusions regarding the examination of the cadaver at the crime scene, because these conclusions, firstly, are not within the competence of the forensic examiner acting as a specialist, and secondly, these conclusions will be made in the forensic report by the forensic examiner acting as a judicial expert;
- Not to mention the identity of the cadaver in the crime scene investigation report, even if it is known, as this is determined through other procedural actions;
- Not to conduct other procedural actions that are documented in the crime scene investigation report, as this contradicts both forensic tactics and procedural criminal law;
- To prohibit including the necessity of subsequent procedural actions, including ordering expert evaluations, in the crime scene investigation report;
- Mandatory packaging and sealing of the cadaver at the crime scene and ensuring its transport to exclude the possibility of substitution or modification of its characteristics, marks, or traces on it;
- Depending on the situation, the removal of objects from the cadaver is permitted;
- Depending on the circumstances, the prosecutorial body will decide who examines the cadaver first: the forensic doctor or the forensic officer.

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